

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BRANDON GREEN,

Plaintiff,

v.

CALVIN JOHNSON, *et al.*,

Defendants.

Case No. 2:22-cv-00711-GMN-NJK

ORDER

Plaintiff Brandon Green brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. (ECF No. 1-1). After granting an extension of time, the Court ordered Green to file an amended complaint by September 22, 2022. (ECF No. 7). The Court warned Green that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.*) That deadline expired and Green did not file an amended complaint, move for an extension, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of

1 cases on their merits; and (5) the availability of less drastic alternatives. See *In re*
2 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
3 *Malone*, 833 F.2d at 130).

4 The first two factors, the public's interest in expeditiously resolving this litigation
5 and the Court's interest in managing its docket, weigh in favor of dismissing Green's
6 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
7 because a presumption of injury arises from the occurrence of unreasonable delay in filing
8 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
9 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
10 cases on their merits—is greatly outweighed by the factors favoring dismissal.

11 The fifth factor requires the Court to consider whether less drastic alternatives can
12 be used to correct the party's failure that brought about the Court's need to consider
13 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
14 that considering less drastic alternatives *before* the party has disobeyed a court order
15 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
16 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
17 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
18 order as satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled
19 with the warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*).
20 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
21 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
22 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
23 unless Green files an amended complaint, the only alternative is to enter a second order
24 setting another deadline. But the reality of repeating an ignored order is that it often only
25 delays the inevitable and squanders the Court's finite resources. The circumstances here
26 do not indicate that this case will be an exception: there is no hint that Green needs
27 additional time or evidence that he did not receive the Court's extension order. Setting
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1 another deadline is not a meaningful alternative given these circumstances. So the fifth
2 factor favors dismissal.

3 **II. CONCLUSION**

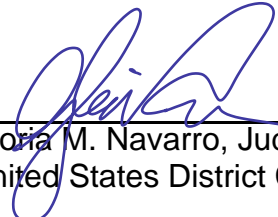
4 Having thoroughly considered these dismissal factors, the Court finds that they
5 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
6 prejudice based on Green's failure to file an amended complaint in compliance with this
7 Court's August 9, 2022, order. The Clerk of Court is directed to enter judgment
8 accordingly and close this case. No other documents may be filed in this now-closed
9 case. If Green wishes to pursue his claims, he must file a complaint in a new case.

10 It is further ordered that Green's application to proceed *in forma pauperis* (ECF
11 No. 1) without having to prepay the full filing fee is **granted**. Green will **not** be required
12 to pay an initial installment fee. Nevertheless, the full filing fee will still be due, pursuant
13 to 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act.

14 It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by the Prison
15 Litigation Reform Act, the Nevada Department of Corrections will forward payments from
16 the account of **Brandon Green, #1020699** to the Clerk of the United States District Court,
17 District of Nevada, 20% of the preceding month's deposits (in months that the account
18 exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of
19 the Court will send a copy of this order to the Finance Division of the Clerk's Office. The
20 Clerk will send a copy of this order to the attention of **Chief of Inmate Services for the**
21 **Nevada Department of Corrections**, P.O. Box 7011, Carson City, NV 89702.

22 It is further ordered that, even though this action is dismissed, or is otherwise
23 unsuccessful, the full filing fee will still be due, pursuant to 28 U.S.C. §1915, as amended
24 by the Prison Litigation Reform Act.

25 DATED THIS 29 day of September 2022.

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Gloria M. Navarro, Judge
United States District Court